

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

v.

KARL O. KOEPKE,
Respondent.

Supreme Court Case
No.: SC20-286

The Florida Bar File
No.: 2020-30,104 (09C)

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RESPONDENT'S ANSWER BRIEF

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STATUTES

Section 744.387(3)(a), Florida Statutes5

PRELIMINARY STATEMENT

Abbreviated Names:

- Anthony J. Caggiano will be referred to as Attorney Caggiano
- Gary E. Doane will be referred to as Attorney Doane
- David Evelev will be referred to as Attorney Evelev
- Double C. Fruit is the Defendant in the personal injury case
- Karl O. Koepke, the Respondent, will be referred to as Mr. Koepke, the Respondent or Attorney Koepke.
- Nancy M. Koepke, the former wife in the divorce case will be referred to as Mrs. Koepke
- Judge Bob LeBlanc Judge in Minor's approval case.
- Anthony Williams is the Plaintiff in the personal injury case
- Gregory M. Wilson will be referred to as Mr. Wilson or Attorney Wilson. Attorney for Mrs. Koepke in divorce case and Prosecutor in contempt case.

NATURE OF THE CASE

This is a disciplinary proceeding in which the Bar seeks disbarment of the Respondent, Mr. Koepke. The Referee recommended a one-year suspension. The disciplinary proceedings arose out of a conviction of Mr. Koepke for two alleged discovery violations in a domestic relations case for Indirect Criminal Contempt for which he served the sentence in solitary confinement. The domestic relations case involved Mrs. Koepke's claim for contempt for Mr. Koepke's failure to pay alimony and Mr. Koepke's petition for modification or termination based upon imputed income to Mrs. Koepke. The Family Court declared a mistrial after the second day of trial as her calendar made it impossible to continue the trial before being transferred to another division. The case was not transferred with the Judge.

The basis of the contempt conviction was for 1) failing to obey a trial subpoena that Mr. Koepke objected to by joining in a motion to quash that was granted before the trial began and 2) an order to produce, "(3) any settlement agreements." He answered, "...there being no settlement, no documents exist or could be found that are responsive.

The case could not be settled because in addition to the injured Plaintiff the case involved minors with very different individual/conflicting interests, medical bills and liens that totaled over 575,000.00 and Court approval that needed to be resolved. Mr. Koepke did not represent the four minors with different mothers. On August 1, 2017, Circuit Judge Bob LeBlanc ruled the case had not settled, "...continue to work towards Settlement." in response to a Motion by the Insurance Attorney to enforce a settlement.

At the Bar Trial, the Referee concluded: 1) ...I do not find that the Bar established by clear and convincing evidence that this respondent did fail to honor the specific subpoena duces tecum because it is clear the Mr. Koepke joined the objection and that Mr. Wilson was aware or should have been aware that Mr. Koepke did oppose that." The issue of not honoring the subpoena for trial is eliminated in the Bar Trial. That basis would provide fifty percent or more of the penalty of jail time.

As to the Order relative to the production -2) "... the referee is convinced that the failure to disclose the settlement agreement was indeed deceitful."

An Order by the Judge in the injury case, Ruling on a Motion to Compel Settlement, indicated it was not settled.

Two attorneys, one the Guardian of the Minors and the attorney who represented Attorney Koepke and signed the Response in question, testified the case was not settled.

The complaining witness Attorney Gregory W. Wilson, attorney for Mrs. Koepke and prosecutor testified - after receiving the documents in question, he did not learn anything new.

STATEMENT OF THE CASE AND FACTS

The Referee ruled the Subpoena Duces Tecum part of the case did not form a basis for an ethical violation.

The only ethical violation issue remaining is - Does Attorney Anthony Caggiano's Answer for Attorney Koepke "there being no settlement, no documents exist or could be found that are responsive." constitute an ethical violation sufficient to support a conviction of Indirect Criminal in the Bar Trial. (Petitioner's Amended Notice of Compliance filed July 20, 2017.)

On August 1, 2017, Judge LeBlanc, the Judge on the personal

injury case, entered an Order instructing the Respondent to "act diligently attempting to move this matter towards a settlement, to include a resolution of all outstanding liens....' This was in response to the insurance company's' Motion to Compel Settlement. The Court and Respondent are in agreement. There was no settlement.

The case was not settled until Judge Bob LeBlanc Ordered the case settled on November 7, 2017 with his ORDER GRANTING GUARDIAN AD LITEM'S PETITION FOR APPROVAL OF SETTLEMENT OF MINOR CHILDREN.

Attorney Wilson testified at the Bar Trial that he did not learn anything new from the receipt of the Mediation Documents produced at the Alimony Trial. Therefore, no harm was done.

Attorney Gary E. Doane who was the Guardian Ad Litem for the minors testified at the Bar Trial the case was not settled until November 7, 2017 when Judge LeBlanc signed the Order approving Settlement. That the Notice of Compliance was proper in that was no settlement. The reasons are - at the time of the subject mediation which occurred on September 9, 2016, the minors were not represented and included in the mediation, they did not have a

Guardian Ad Litem, there was no recommendation that the proposed settlement for the policy limits as in the best interest of the children, no determination as to the net amount would be for distribution to the plaintiffs and no agreement among the plaintiffs as to a split of any net amount. He testified that under Florida Statute 744.387 (3)(a) no settlement was effective until approved by the court. He testified that in the case of *Castro v. Linfante*, 307 So.3d 110 (Fla. 3rd DCA 2020) held that the claims of the minors were separate causes of action. Each claim of the minors' was different and independent from the main action. He testified that the parties to the mediation could not bind the minors without appropriate consent and Order of the Court. He filed a Report to the Court and obtained approval of the Court on November 7, 2017, some fifteen months after Attorney was advised that the case was in suit involving paraplegia and some thirteen months after Attorney Wilson's Interrogatory asking when the \$400,000.00 fee would be received. November 7, 2017, was the day the case was settled.

Attorney Tony Caggiano offered the same testimony as Attorney Doane. The case was not settled, the response was proper and no harm was done.

The Referee did not find an ethical violation relative to the subpoena. However, did find ethical violations as to the response "there being no settlement, no documents exist or could be found that are responsive." and recommended a one year suspension.

The Florida Bar seeks disbarment based upon the Report of the Referee. The Respondent is not guilty based on the evidence and testimony produced at the Bar Trial. There was no settlement, in accordance to Judge Bob LeBlanc, Attorney Gary E. Doane and Attorney Anthony J Caggiano. No harm was done according to the complaining witness Attorney Gregory M. Wilson.

The following is a time line for reference.

Time Line

2016

- May 26, 2016: Date of Accident
- July 02, 2016: Contract signed**
- July 07, 2016: Complaint filed for Anthony Williams did not include the childrens' claims.
- July 25, 2016: Forwarded to Attorney Wilson:**
- Respondent's complete**
- Case List**
- 20. Williams v. Double C. Fruit Inc.**
- 20. FACTS- Tractor Trailer auto accident**
- Double D. Fruit Inc. Injury - Paralysis from chest down**
- (IN SUIT)**
- Defense - W.C**
- September 9, 2016 : Global Mediation - Tendered 1 million with conditions*
- October 3, 2016: Interrogatory from Attorney Wilson to Respondent: "Please advise to the best of**

your knowledge when the closing on the case wherein you are to receive approximately \$400,000.00 as a fee will be consummated and the money will be sent to and received by you."

November 7, 2016: Answer: Unknown

2017

January 1, 2017: Forwarded to Attorney Wilson: Attorney David Evelev, for Defendant and Ins. Co. checked: No Release of Claims has been signed in the Anthony Williams v Double C. matter. No Funds from the Anthony Williams matter has been transferred to any person, entity or party.

May 22, 2017: Attorney Evelev's Motion to Compel Settlement of personal injury case.

July 20, 2017: *Petitioner's Amended Notice of Compliance: "there being no settlement, no documents exist or could be found that are responsive."*

July 25, 2017: Hearing on Attorney Evelev's MOTION TO COMPEL SETTLEMENT with Judge LeBlanc. Court Minutes: "Mr. Greg Wilson, who has collateral interest, appeared in Court which Parties objected to his presence at hearing due to case dealing with minors and confidentiality agreement. The Court directed Mr. Wilson to leave the Courtroom, the only parties present were attorneys for the parties and court staff." (R-Ex 23) (Order signed August 1, 2017.)

August 1, 2017: Judge Bob LeBlanc's Order - "...continue to work towards Settlement." (THERE WAS NO SETTLEMENT)

September 27, 2017: Guardian Ad Litem's Interim Report

November 3, 2017: Petition for Approval Minors' Settlement

November 7, 2017: Order Approving Minors' Settlement

November 8, 2017: Release signed by Anthony Williams for himself and all persons claiming an interest.

2018

April 25, 2018: Indirect Criminal Contempt Trial

SUMMARY OF THE ARGUMENT

Attorney Caggiano's response, " there being no settlement, no documents exist or could be found that are responsive." was not deceitful. There was no settlement per Judge Bob LeBlanc's Order of on the Motion to Enforce Settlement. Mrs. Koepke's attorney Greg Wilson knew of the case and how much money was involved for thirteen months before the case was settled. He learned nothing new upon receipt of the documents. No harm was done.

THE DECISION-MAKING PROCESS IN A DISCIPLINARY PROCEEDING AND THE STANDARD OF REVIEW

The Respondent agrees adopts this section of the Appellant's Main Brief. In particular, "... (T)his Court will generally not second-guess the referee's recommended discipline, as long as it has a reasonable basis in existing case law and the standards." *See The Florida Bar v. Alters*, 260 So.3d 72, 83 (Fla. 2018); *The Florida Bar v. DeLaTorre*, 994 So.2d 1032 (Fla. 2008).

ARGUMENT

I. The Referee's recommendation of the appropriate sanction relied upon standards recommending a suspension. Her findings of fact support a recommendation of a one-year suspension not disbarment.

In each instance, the Referee selected the subsection of the standard recommending suspension. This was correct. In the Contempt Trial the first charge was that Mr. Koepke failed to obey a trial subpoena. Testimony by Attorney Gregory Wilson, the prosecutor, attorney for Mrs. Koepke and main witness, was Mr. Koepke failed to honor his trial subpoena. In the Bar Trial the Referee eliminated this charge by ruling, "... I do not find that the Bar established by clear and convincing evidence that this respondent did fail to honor the specific subpoena duces tecum because it is clear that Mr. Koepke joined the objection and that Mr. Wilson was aware or should have been aware that Mr. Koepke did oppose that."

As to no knowledge of a fee, Attorney Wilson asked about the \$400,000.00 fee in a October 3, 2016 Interrogatory some thirteen

months before the case settled on November 7, 2017

As two "Count II" that the failure to disclose the settlement agreement in the discovery answer, "there being no settlement, no documents exist or could be found that are responsive."

Attorney Wilson testified, in the Bar Trial, after receiving the documents in question, he did not learn anything new. Therefore, no harm was done.

II. The mitigating and aggravating factors do not support a finding of disbarment.

The respondent has an exemplary Bar and personal record. That should not be used against him for the claim disbarment.

III. The case law does support a suspension not disbarment.

The cases cited by the Bar during the Bar Trial dealt with suspension not disbarment. The facts of this case and cases cited in the Bar's Brief do not warrant disbarment.

CONCLUSION

This was a case of two Trials with different results. The Bar Trial completely rejecting the "failing to honor a Trial Subpoena" in the Contempt Trial even though it was put forth by an attorney.

This false testimony could only tremendously affect the opinion to the trial judge that Attorney was the awful person that he described in his Order. This was then used as evidence in the Bar Trial. The intent of the Respondent was taken from the words in the Judgment of Conviction not live testimony. The Respondent should have been found not guilty, but he was not.

The Respondent fully cooperated and helped move forward one of the first Disciplinary Virtual Trials in the State of Florida. After the Referee filed her Ruling, he called the Bar to learn who should be the payee on the cost check. He was advised he would have to wait for that. He accepts the findings of the Referee and thanks her for her courtesy and excellent judicial demeanor. Based upon the testimony and the law The Bar did not carry its burden relative to the disbarment and urge the Court to deny their request for disbarment. The Time Line is proof of Attorney Wilson's knowledge beginning thirteen months before the settlement as to the amount of money involved. The amount of the potential settlement was not hidden. I feel the law, testimony and evidence shows I am not guilty, but will accept the penalty of a one-year suspension.

Thank you so much for your service to the Bar.

Respectfully submitted,

/s/ Karl O. Koepke

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was this date filed and served by using the Florida Courts e-Filing Portal on this 16th day of March 2021 to:

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CERTIFICATE OF TYPE SIZE, STYLE AND WORD COUNT

I HEREBY CERTIFY that the type size, style and word count utilized in the Brief was 14- point Bookman Old Style with a 2,660 word count.

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